

[TRANSLATION]

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THE FACTS

The applicant, Antonio Mata Estevez, is a Spanish national. He was born in 1953 and lives in Madrid.

A. THE CIRCUMSTANCES OF THE CASE

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant lived with another man, Mr G.C., for more than ten years. During that period the applicant and Mr G.C. ran a joint household, pooling their income and sharing their expenses. The applicant considered that the nature of their relationship reflected their right to respect for their private and family life since, being homosexual, they could not sanction it by marrying because under Spanish law only heterosexual couples could marry.

On 13 June 1997 Mr G.C. died in a road accident. The applicant claimed the social-security allowances for the surviving spouse, arguing that he had cohabited with the deceased for many years. The National Institute of Social Security ("INSS") granted the applicant's claim in respect of an allowance for death expenses, which amounted to 5,000 pesetas. However, in a decision of 24 September 1997, it refused to grant him a survivor's pension on the ground that since he had not been married to Mr G.C., he could not legally be considered as his surviving spouse for the purposes of section 174 (1) of the General Social Security Act. The applicant appealed against that decision, but his appeal was dismissed.

The applicant then appealed to the Madrid Social and Employment Court no. 15. In a judgment of 22 April 1998, delivered after a hearing deemed to be *inter partes*, the court dismissed the appeal. It based its decision on, among other things, the case-law established by a number of judgments of the Constitutional Court dismissing appeals lodged by heterosexual applicants whose claims for a survivor's pension had been dismissed on the ground that they had been able to marry but had freely decided not to. The court held that the case-law in question could be extended to *de facto* partnerships between homosexuals living together as a married couple in so far as that type of relationship could not be equated with the traditional concept of family and marriage protected by the legislature and the Constitution. The court also stated that Articles 8, 12 and 14 of the European Convention on Human Rights did not guarantee equality

of treatment between *de facto* homosexual partnerships and heterosexual marriages.

The applicant appealed against that judgment to the Madrid High Court of Justice. In a judgment of 26 January 1999 that court dismissed the appeal and upheld the reasoning of the lower court. The High Court added, however, that it was for the legislature and not for the courts to take a decision regarding the extension of survivors' pensions to stable *de facto* partnerships, be they heterosexual or not. Accordingly, the High Court held that section 174 (1) of the General Social Security Act was compatible both with the Constitution and the international treaties to which Spain was a party.

Relying on Articles 14 (principle of non-discrimination) and 39 (social, economic and legal protection of the family) of the Constitution, the applicant lodged an application for the protection of fundamental rights (an *amparo* appeal) with the Constitutional Court. In a decision of 21 October 1999, in which it referred to its established case-law, that court dismissed the appeal on the ground that it was ill-founded.

B. RELEVANT DOMESTIC LAW

1. CONSTITUTION

The relevant Articles of the Constitution provide:

Article 14

“Spaniards shall be equal before the law and may not be discriminated against in any way on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance.”

Article 39

“1. The State authorities shall ensure that the family is afforded social, economic and legal protection.

...”

2. GENERAL SOCIAL SECURITY ACT (AS AMENDED)

Under section 174 non-marital relationships between men and women do not entitle the survivor to a survivor's pension even where the persons concerned have lived together. Accordingly, the award of a survivor's pension is conditional on the existence of a lawful marriage between the deceased and the claimant. Marriage shall be deemed to be “lawful” where it has been celebrated in accordance with one of the forms established by

Article 149 of the Civil Code. The only exception to the above rule is that the surviving partner of an unmarried couple who could not marry each other because there was no divorce before 1981 may claim a survivor's pension.

COMPLAINT

The applicant complained of the difference of treatment regarding eligibility for a survivor's pension between *de facto* homosexual partners and married couples, or even unmarried heterosexual couples who, if legally unable to marry before the divorce laws were passed in 1981, are eligible for a survivor's pension. He submitted that such difference in treatment amounted to unjustified discrimination which infringed his right to respect for his private and family life. He relied on Articles 8 and 14 of the Convention.

THE LAW

The applicant complained that the refusal to award him a survivor's pension amounted to discriminatory treatment infringing his right to respect for his private and family life. He relied on Articles 8 and 14 of the Convention, the relevant parts of which provide:

Article 8

"1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in ... Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court observes at the outset that the applicant claimed to have cohabited with Mr G.C. for more than ten years, during which time they pooled their income and shared their expenses. He therefore considered that

the decision not to award him a survivor's pension amounted to an infringement of his private and family life.

As regards establishing whether the decision in question concerns the sphere of "family life" within the meaning of Article 8 § 1 of the Convention, the Court reiterates that, according to the established case-law of the Convention institutions, long-term homosexual relationships between two men do not fall within the scope of the right to respect for family life protected by Article 8 of the Convention (see *X. and Y. v. the United Kingdom*, application no. 9369/81, Commission decision of 3 May 1983, Decisions and Reports (DR) 32, p. 220, and *S. v. the United Kingdom*, application no. 11716/85, Commission decision of 14 May 1986, DR 47, p. 274). The Court considers that, despite the growing tendency in a number of European States towards the legal and judicial recognition of stable *de facto* partnerships between homosexuals, this is, given the existence of little common ground between the Contracting States, an area in which they still enjoy a wide margin of appreciation (see, *mutatis mutandis*, the *Cossey v. the United Kingdom* judgment of 27 September 1990, Series A no. 184, p. 16, § 40, and, *a contrario*, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 104, ECHR 1999-VI). Accordingly, the applicant's relationship with his late partner does not fall within Article 8 in so far as that provision protects the right to respect for family life.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention for the purposes of Article 35 § 3.

With regard to private life, the Court acknowledges that the applicant's emotional and sexual relationship related to his private life within the meaning of Article 8 § 1 of the Convention. Regarding the refusal to award the applicant a survivor's pension, it reiterates, firstly, that the Convention does not guarantee, as such, any right to a pension (see *Lokkertsen-Meertens Emilie v. Belgium*, application no. 5763/72, Reports 46, p. 76, and *X. v. Austria*, application no. 7624/76, Commission decision of 6 July 1977, DR 19, pp. 100-10). However, the question might arise as to whether, in the circumstances of the case, the decision in question could amount to a discriminatory interference in breach of Articles 8 and 14 taken together. In that connection the Court considers that, even supposing that the refusal to award the applicant the right to a survivor's pension following his partner's death did constitute an interference with respect for his private life, that interference was justified under paragraph 2 of Article 8.

The Court accepts, firstly, that the applicant might have been treated differently if his partner had been of the opposite sex. Indeed, as the applicant pointed out, Spanish legislation has taken some account of the situation of unmarried couples with regard to their eligibility for a survivor's pension since, under Spanish law, persons living together as man and wife who could not marry each other because divorce was not

permissible before 1981 have been eligible for a survivor's pension. That being said, the Court notes that marriage constituted an essential precondition for eligibility for a survivor's pension and that even in the situation referred to by the applicant it was a notional condition for recognition of eligibility. It has to be noted that in no circumstances do the laws in force in Spain permit marriage between persons of the same sex.

The Court reiterates that a difference in treatment is discriminatory under Article 14 if it "has no objective and reasonable justification", in other words if it does not pursue a "legitimate aim" or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see the case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" of 23 July 1968, Series A no. 6, p. 34, § 10). In the instant case the Court notes that Spanish legislation relating to eligibility for survivors' allowances does have a legitimate aim, which is the protection of the family based on marriage bonds (see, *mutatis mutandis*, the *Marckx v. Belgium* judgment of 13 June 1979, Series A no. 31, § 40). The Court considers that the difference in treatment found can be considered to fall within the State's margin of appreciation (see *Quintana Zapata v. Spain*, application no. 34615/97, Commission decision of 4 March 1998, DR 92, p. 139, and *Saucedo Gomez v. Spain*, application no. 37784/97, Commission decision of 26 January 1999, unreported).

In these circumstances the Court considers that the impugned decisions do not constitute a discriminatory interference with the applicant's private life contrary to Article 8, taken in conjunction with Article 14 of the Convention. Accordingly, the application must be rejected as manifestly ill-founded, in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President